scintilla of evidence that they knew of any adjudication on their claims?

This ground alone suffices to dispose of the appeal in so far as the complainants, other than Yap Sow, are concerned. The appeal is allowed and the order of the Junior Assistant Commissioner is therefore set aside as regards these 16 persons.

It remains to deal only with the respondent, Yap Sow. I do not propose to deal in extenso with the evidence in her case. The Junior Assistant Commissioner rejected the appellant's defence because of two supposed major discrepancies between the latter's evidence and that of two of his witnesses. I think the first discrepancy, where his kepala (D.W. 1) said he was not present when the complainants were alleged to have told the appellant that they were going to stop work, was of a trifling character. The kepala did in fact go to the appellant's house, about an hour after the event, and the mistake could very well have been an honest mistake on the part of the appellant. As to Tan Yew Choi (D.W. 2), he did not contradict the appellant; the person he contradicted was the kepala (D.W. 1), but in so doing, it must be observed that from Yap Sow's cross-examination her case was that D.W. 2 was present at the weighing shed (page 13). He was therefore worthless as a witness.

On the other hand I fail to understand why Lim Kiew and Lee Lang, who could have supported the evidence of Yap Sow, were not called to do so. They could have testified to the circumstances of the alleged dismissal at the latex shed. Lee Sui was not present, but those two were. Xavier, an independent witness, was also present and though he could and ought to have been examined as to what took place, he was not. Lee Yoon Fook (D.W. 3) tended to corroborate the appellant, but the Junior Assistant Commissioner ignored or overlooked her entirely. In my opinion the Junior Assistant Commissioner had misdirected himself on the material portions of the evidence and his judgment cannot stand.

I am less loath to reverse him on a question of fact because I think he has also overlooked a material point of law. The appellant clearly said that his kepala had no authority to dismiss tappers. If D.W. 2 purported to dismiss them at the latex shed he did so without authority. The tappers might not have known of this, but the principal is not liable for an act of his agent exceeding the scope of his authority. If the tappers took umbrage over the kepala's unwarranted action they should have gone to the appellant, as I believe they did. Unfortunately when the tappers met the appellant there must have been a serious misunderstanding which neither side chose to dispel. The appellant cannot be blamed for it. In the result I would also allow the appeal as to Yap Sow. The order of the Junior Assistant Commissioner is set aside. I order rehearing of Yap's claim before a different Labour Officer. I make no order as to costs.

Appeal allowed.

Solicitors: *S. M. Yong & Co.*

PUBLIC PROSECUTOR v. ABDUL SAMAD

[A. Cr. J. (Hepworth J.) July 30, 1960]

[Kuala Trengganu — Criminal Appeal No. 7 of 1960]

Road Traffic —
Notice of intended prosecution — Onus — Road Traffic Ordinance, 1958, ss.36(1) and 56 — Service of Notice by registered post.

In this case the respondent was charged with driving a motor car without care and attention, an offence under section 36(1) of the Road Traffic Ordinance. The Magistrate found that the facts warranted a conviction, but acquitted and discharged him on the ground that the prosecution failed to comply with the provisions of section 56. On appeal the prosecution pointed out that at no stage did the respondent or any of his witnesses state that he had not received a notice in writing of the intended prosecution within 14 days of the commission of the offence, or at any other time.

Held: as there was nothing to show in the evidence whether or not a notice had been sent to the respondent in due time, by virtue of the provisions of Proviso (ii) section 56 should be deemed to have been complied with.

Per Curiam: although Proviso (ii) to section 56 of the Road Traffic Ordinance, 1958, places the onus of showing that this section had not been complied with upon the person being prosecuted it is none the less important that the provisions of sub-section (b) of the section (in the vast majority of cases it will be the question of a notice and not of a summons) are strictly complied with by the Police not only as to specifying in the notice the nature of the alleged offence and the time and place where it is alleged to have been committed but also as to service of the notice either personally or by sending by registered post.

If service of the notice is to be effected by registered post, whether or not the defendant receives the notice within 14 days is immaterial. It is necessary, however, that in effecting service in this manner the Police should act reasonably.

Cases referred to:—

(1) *Sandland* v. *Neale* [1955] 3 All E.R. 571, 573; [1956] 1 Q.B. 241; [1955] 3 W.L.R. 689.
(2) *Milner* v. *Allen* [1933] 1 K.B. 689; [1933] All E.R. Rep. 734.
(3) *Venn* v. *Morgan* [1949] 2 All E.R. 562.
(4) *Pope* v. *Clarke* [1953] 2 All E.R. 704; [1953] 1 W.L.R. 1060.
(5) *Stanley* v. *Thomas* [1939] 2 K.B. 462; [1939] 2 All E.R. 636.
(6) *Holt* v. *Dyson* [1951] 1 K.B. 364; [1950] 2 All E.R. 840.

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Aziz bin Mohamed Zain (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Hepworth J.: The respondent was charged with driving a motor car without due care and attention, an offence under section 36(1) of the Road Traffic Ordinance, 1958. The Magistrate after finding that the facts warranted a conviction as charged none the less acquitted and discharged the respondent on the ground that the Prosecution had failed to comply with the provisions of section 56 of the Ordinance.

From this order of acquittal the Public Prosecutor appealed on the ground that the onus of proving that Section 56 had not been complied with was upon the respondent by virtue of Proviso (ii) to that section, and that the respondent had failed to do so.

"56. Where a person is prosecuted for an offence under section 35 or section 36 or any of the provisions of this Part of this Ordinance relating to the maximum speed at which motor vehicles may be driven, he shall not be convicted unless within fourteen days of the commission of the offence —

(a) a summons for the offence was served on him; or

(b) a notice in writing of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that —

(i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that —

(a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or

(b) the accused by his own conduct contributed to such failure; and

(ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved:

Provided further that this section shall not apply in any case in which the person prosecuted was, in connection with the incident in respect of which a charge against such person is preferred, arrested either on the day on which such incident occurred or within fourteen days of such date."

At no stage of the case did the respondent or any of his witnesses state that he had not received a notice in writing of the intended prosecution within 14 days of the commission of the offence or at any other time. There was nothing to show on the evidence whether or not a notice had been sent to him in due time and accordingly by virtue of the provisions of Proviso (ii) the section should have been deemed to have been complied with.

This being the case and the Magistrate in his Grounds of Judgment having expressed his view that the facts disclosed the commission of an offence under section 36(1) of the Ordinance, with which view I agreed, I allowed the appeal, quashed the order of acquittal and substituted therefor a conviction under section 36(1) of the Road Traffic Ordinance, 1958, and sentenced the accused to pay a fine of $100 in default three weeks' imprisonment and ordered his licence to be endorsed.

The provisions of section 56 of the Ordinance are substantially similar to the provisions of section 21 of the Road Traffic Act, 1930.

In *Sandland* v. *Neale*[1] at p. 573 Lord Goddard stated:

"The object of the section is, of course, plain; it is to let the offender know promptly that he may be prosecuted so that he may be able to collect material for his defence while the matter is fresh in his memory and that of potential witnesses; so the sooner the notice is given, the better".

Although Proviso (ii) to section 56 of the Ordinance places the onus of showing that this section has not been complied with upon the person being prosecuted it is none the less important that the provisions of sub-section (b) of the section (in the vast majority of cases it will be the question of a notice and not of a summons) are strictly complied with by the Police not only as to specifying in the Notice the nature of the alleged offence and the time and place where it is alleged to have been committed but also as to service of the Notice either personally or by sending by registered post. (As to the nature of the alleged offence, see *Milner* v. *Allen*,[2] and *Venn* v. *Morgan*.[3] As to the time and place where the offence is alleged to have been committed, see *Pope* v. *Clarke* [4]).

If service is to be effected by registered post, whether or not the defendant receives the notice within fourteen days is immaterial; the section requires the notice to be sent within that time; it says nothing about receipt for the obvious reason that the person to whom it is sent may be away from home when the letter is delivered. It is necessary, however, that in effecting service in this manner the Police should act reasonably (see the observations of Lord Goddard C.J. in *Sandland* v. *Neale, supra; Stanley* v. *Thomas*[5]; *Holt* v. *Dyson* [6]).

Appeal allowed.

IDRIS v. PUBLIC PROSECUTOR

[C. A. (Hill Ag. C.J., Good and Hepworth JJ.) August 3, 1960]

[Penang — Criminal Appeal No. 11 of 1960]

Criminal law — Murder — Circumstantial evidence — Submission of no case to meet — Procedure.

Circumstantial evidence should be such that when you look at all the surrounding circumstances, you find such a series of undesigned, unexpected coincidences that, as a reasonable person, you find your judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps then it is of no use at all. In this case the circumstantial evidence pointed conclusively to the accused's guilt.

An example of a case where procedure adopted of addresses and summing up to the jury was quite inappropriate and incorrect.

Procedure for the defence in criminal trial before the High Court to submit, at the close of the case for the prosecution, that there is no case to go to jury illustrated in the judgment of Terrell J. in *R.* v. *Koh Soon Poh*[1] approved.

Case referred to:—

(1) *R.* v. *Koh Soon Poh* [1935] M.L.J. 120.

COURT OF APPEAL (CRIMINAL).

A. Jayadeva for the appellant.

J. P. Kirby (Deputy Public Prosecutor) for the respondent.

Hill Ag. C.J.: We dismissed this appeal on 11th July, 1960, and indicated that we would state our reasons for doing so at a later date.

The appellant was convicted and sentenced to death for the murder on 25th August, 1959, of Ku Bedah binti Ku Hassan at Kampong Kodiang Lama in the State of Kedah. The dead woman was the appellant's ex-wife.

Except for certain evidence with regard to motive the case for the prosecution consisted